

**OFFICE OF HEARINGS AND APPEALS
RULES FOR ADMINISTRATIVE HEARINGS
FOR ETHICS CASES**

Rule 1. APPLICABILITY

These rules shall apply to all ethics cases before the Office of Hearings and Appeals pursuant to 2 N.N.C. § 1051 *et. seq.*, 2 N.N.C. § 3741 *et. seq.*, and the Amendments to Title Two of the Navajo Nation Code. CAP-10-11.

Rule 2. PRELIMINARY MATTERS

A. Conduct of Hearings. An Administrative Hearing Officer with the Office of Hearings and Appeals shall preside over all ethics cases.

B. Stipulations/Motions. Parties are allowed to make any request or make known any stipulations before the initial hearing, and thereafter.

C. Interpreters. Parties may arrange for interpreters at their own expense. An Interpreter's Oath shall be administered to such persons.

D. Representation. The Ethics and Rules Office shall be represented by counsel who is licensed by and an active member in good standing with the Navajo Nation Bar Association. Respondents may be represented by legal counsel provided such counsel is licensed by and an active member in good standing with the Navajo Nation Bar Association.

E. Ex Parte Communications Prohibited. Ex parte communications in any form is strictly prohibited in all ethics cases before the Office of Hearings and Appeals. Attorneys and advocates representing parties shall adhere to the Navajo Nation Bar Association Rules of Professional Conduct.

F. Rules. It is the responsibility of the parties to obtain and know the applicable rules that govern ethics cases. Copies of the rules shall be kept at the Office of Hearings and Appeals. Parties may obtain copies of the rules at the Office of Hearings and Appeals during normal business hours.

Rule 3. EVIDENCE/BURDEN OF PROOF.

A. The burden of proof in ethics cases shall rest with the Ethics and Rules Office.

B. The standard shall be the clear and convincing standard.

C. Administrative proceedings before the Office of Hearings and Appeals shall be informal. Unless unrelated to proceedings, evidence offered by the parties shall be liberally admitted.

Rule 4. ETHICS AND RULES COMPLAINTS

A. Ethics and Rules Office. Pursuant to the *Ethics in Government Law*, 2 N.N.C. § 3741 *et seq.* the Navajo Nation Ethics and Rules Office is authorized to file ethics complaints with the Office of Hearings and Appeals.

B. Complaint content. All complaints shall be drafted with clarity, stating statutory violations which are adequately supported by factual basis. Complaints may request specific remedies pursuant to the *Ethics in Government Law*.

C. Complaint dismissals. The Office of Hearings and Appeals shall be authorized to summarily dismiss complaints without prejudice based on lack of jurisdiction, insufficient facts to constitute a violation, or if there is insufficient evidence to support the allegations.

D. Notice and Service of Documents.

i. Complaints. The Ethics and Rules Office shall, by personal service, provide to the Respondent all complaints and other documents to be introduced by the office. If personal delivery has been attempted but not successful, delivery may be made by certified mail, restricted delivery. Any other method of delivery shall be approved by the Office of Hearings and Appeals.

ii. Subpoenas. Parties may request subpoenas be issued for certain documents and or for the testimony of certain witnesses. The responsibility of costs and to serve subpoenas shall rest with the party requesting them.

E. Service of process. Complaints and any other legal documents issued by the Office of Hearings and Appeals shall be served by any law enforcement officer, registered process server, or Investigators of the Ethics and Rules Office. Service of process may also be by certified mail, restricted delivery, if personal service has been attempted but unsuccessful. Any other method of service shall be approved by the Office of Hearings and Appeals.

F. Answers. A Respondent may file a written answer at any time prior to the commencement of a hearing on the merits of the complaint.

G. Motions. Motions shall be presented to the Office of Hearings and Appeals no later than five (5) working days prior to hearing, except for good cause.

RULE 5. HEARING PROCEDURE

A. Reading of complaints. Complaints shall be read into the record unless the Respondent waives such reading.

B. Opening statements. Opening statements shall be permitted. The Ethics and Rules Office shall be first, followed by the Respondent.

C. Oaths. Prior to testimony, witnesses shall be sworn to tell the truth.

D. Witness exclusion. Prior to commencement of testimony, all witnesses shall be excluded from the hearing room except for the parties.

E. Procedure. The Ethics and Rules Office shall first present its case followed by the Respondent. Rebuttal evidence and testimony, if any, shall be presented in the same order.

F. Cross examination. The parties and their witnesses shall be subject to cross examination.

G. Questions by Hearing Officer The Hearing Officer shall be permitted to ask questions of witnesses or counsel regarding any testimony.

H. Closing arguments. Closing arguments shall be permitted. The Ethics and Rules Office shall first provide its closing argument followed by the Respondent. The Ethics and Rules Office shall be allowed to provide a final rebuttal.

I. Record of Proceedings. A full and complete record of all proceedings before the Office of Hearings and Appeals shall be taken by electronic form.

Rule 6. DECISIONS

The Hearing Officer shall render a written decision within ten (10) working days of the hearing, or as soon thereafter as reasonably possible. All decisions shall be issued by the Office of Hearings and Appeals and forwarded through regular United States mail, or hand delivered. If a Respondent was represented by legal counsel the decision shall issue to him or her.

Rule 7. APPEALS

In accordance with 2 N.N.C. § 3771, a final decision of the Office of Hearings and Appeals may be appealed to the Navajo Nation Supreme Court within ten (10) working days of decision issuance.

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